

1
2
3 **UNITED STATES DISTRICT COURT**
4 **WESTERN DISTRICT OF WASHINGTON**
5 **AT SEATTLE**

6 CHERYL KATER and SUZIE KELLY,
7 individually and on behalf of all others
8 similarly situated,

9 *Plaintiffs,*

10 *v.*

11 CHURCHILL DOWNS INCORPORATED, a
12 Kentucky corporation, and BIG FISH GAMES,
13 INC., a Washington corporation.

14 *Defendants.*

15 No. 15-cv-00612-RSL

16 **STIPULATION AND ORDER RE**
17 **AGREED RIDER TO PROTECTIVE**
18 **ORDER REGARDING THE USE AND**
19 **DISCLOSURE OF DISCOVERY**
20 **PRODUCED BY NONPARTY**
21 **AMAZON.COM, INC.**

22 Noting Date: November 27, 2020

23 MANASA THIMMEGOWDA, individually
24 and on behalf of all others similarly situated,

25 *Plaintiff,*

26 *v.*

27 BIG FISH GAMES, INC., a Washington
28 corporation; ARISTOCRAT
29 TECHNOLOGIES INC., a Nevada
30 corporation; ARISTOCRAT LEISURE
31 LIMITED, an Australian corporation; and
32 CHURCHILL DOWNS INCORPORATED, a
33 Kentucky corporation,

34 *Defendants.*

35 No. 19-cv-00199-RSL

36 **STIPULATION AND ORDER RE**
37 **AGREED RIDER TO PROTECTIVE**
38 **ORDER REGARDING THE USE AND**
39 **DISCLOSURE OF DISCOVERY**
40 **PRODUCED BY NONPARTY**
41 **AMAZON.COM, INC.**

1 This agreement is entered into between and among nonparty Amazon.com, Inc.
2 ("Amazon") and certain parties to the two actions captioned above, *Kater et al. v. Churchill*
3 *Downs Incorporated, et al.*, No. C15-0612-RSL (the "Kater Action") and *Thimmegowda v. Big*
4 *Fish Games, et al.*, No. C19-0199-RSL (the "Thimmegowda Action" and, together with the Kater
5 Action, the "Actions"), specifically: *Kater* Action plaintiffs Cheryl Kater and Suzie Kelly; and
6 *Thimmegowda* Action plaintiff Manasa Thimmegowda (collectively with Ms. Kater and Ms.
7 Kelly, the "Plaintiffs"). Plaintiffs and Amazon anticipate that Amazon will produce documents
8 in this action that contain sensitive consumer information. This agreement is intended to
9 supplement the protective order entered by the Court on May 5, 2020 (ECF Nos. 192-1 and 213
10 in the *Kater* Action) ("Protective Order").

11 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds good
12 cause for the following Agreed Rider To Protective Order Regarding The Use And Disclosure Of
13 Discovery Produced By Nonparty Amazon.com, Inc. ("Rider").

14 **PURPOSES AND LIMITATIONS**

15 Amazon Protected Material designated under the terms of this Rider shall be used by the
16 Class Action Administrator and Parties solely for the purpose of providing notice to and
17 verifying and paying the recovery amount owed to each member of the Settlement Class.
18 Amazon Protected Material shall not be used directly or indirectly for any other purpose
19 whatsoever.

20 No Amazon Protected Material provided by Amazon to the Class Action Administrator
21 under the terms of this Rider may be shared with any of the Parties, unless specifically
22 authorized by this Rider.

23 It is the intention of Amazon and the Parties that this Rider will protect all materials
24 produced by Amazon in the Actions unless otherwise specified.

25

26

27

STIPULATION AND ORDER

Case Nos. 15-cv-00612-RSL; 19-cv-00199-RSL - 2

TOUSLEY BRAIN STEPHENS PLLC

1700 Seventh Avenue, Suite 2200

Seattle, Washington 98101-4416

Tel: 206.682.5600 • Fax: 206.682.2992

1 **DEFINITIONS**

2 “Class Action Administrator” means Angeion Group, acting as class action administrator
3 to effect the Class Action Settlement Agreement entered.

4 “Class Action Settlement Agreement” means the document filed at ECF No. 218-1 in the
5 *Kater* Action.

6 “Outside Counsel” means (i) outside counsel who appear on the pleadings as counsel for
7 a Party and (ii) partners, associates, and staff of such counsel to whom it is reasonably necessary
8 to disclose the information for this litigation.

9 “Amazon Protected Material” means any discovery produced by Amazon in the Actions.

10 “Settlement Class” has the meaning provided in the Class Action Settlement Agreement.

11 **COMPUTATION OF TIME**

12 The computation of any period of time prescribed or allowed by this Order shall
13 be governed by the provisions for computing time set forth in Federal Rule of Civil Procedure 6.

14 **SCOPE**

15 The protections conferred by this Rider cover not only the Amazon Protected Material
16 governed by this Rider as addressed herein, but also any information copied or extracted
17 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
18 conversations, or presentations by Parties or their counsel in court or in other settings that might
19 reveal Amazon Protected Material.

20 Nothing in this Rider shall prevent or restrict Amazon’s own disclosure or use of its own
21 Amazon Protected Material for any purpose, and nothing in this Rider shall preclude Amazon
22 from showing its Amazon Protected Material to an individual who prepared the Amazon
23 Protected Material.

24 **DURATION**

25 Even after the termination of this case, the confidentiality obligations imposed by this
26 Order shall remain in effect until a Producing Party agrees otherwise in writing or a court order
27 otherwise directs, subject to the Final Disposition clause herein.

1 **ACCESS TO AMAZON PROTECTED MATERIAL**

2 Basic Principles. All Amazon Protected Material shall be used solely for the purpose of
3 providing notice to and verifying and paying the recovery amount owed to members of the
4 Settlement Class, and not for any other purpose whatsoever, including without limitation any
5 other litigation, patent prosecution or acquisition, patent reexamination or reissue proceedings, or
6 any business or competitive purpose or function. Amazon Protected Material shall not be
7 provided, distributed, disclosed, or made available to anyone except as expressly provided in this
8 Rider.

9 Secure Storage, No Export. Amazon Protected Material must be stored and maintained
10 by a Receiving Party at a location in the United States and in a secure manner that ensures that
11 access is limited to the persons authorized under this Rider. To ensure compliance with
12 applicable United States Export Administration Regulations, Amazon Protected Material may
13 not be exported outside the United States or released to any foreign national (even if within the
14 United States).

15 Legal Advice Based on Amazon Protected Material. Nothing in this Rider shall be
16 construed to prevent counsel from advising their clients with respect to this case based in whole
17 or in part upon Amazon Protected Materials, provided counsel does not disclose the Amazon
18 Protected Material itself except as provided in this Rider.

19 Limitations. Nothing in this Rider shall restrict in any way Amazon's use or disclosure
20 of its own Amazon Protected Material.

21 Designation. For the avoidance of doubt, in all circumstances not specifically addressed
22 by this Rider, all Amazon Protected Material shall be treated as if designated
23 "CONFIDENTIAL" under the Protective Order regardless of whether the Amazon Protected
24 Material has been stamped or marked in accordance with that Order.

25 **USE OF PROTECTED MATERIAL**

26 It is Amazon's and the Parties' intention that Amazon will produce Amazon Protected
27 Materials directly to the Class Action Administrator, with no production to any of the Parties.

1 Unless otherwise ordered by the Court or authorized through the prior written consent of
2 Amazon, the Class Action Administrator may disclose Amazon Protected Materials only to those
3 members of the Class Action Administrator's staff, or to any copying, clerical or other support
4 services working at the direction of the Class Action Administrator, to whom disclosure is
5 reasonably necessary in order to provide notice to and/or to verify and pay the recovery amount
6 owed to members of the Settlement Class, provided that each such person to whom disclosure is
7 made must first agree to be bound by the provisions of this Rider by signing a copy of Exhibit A.

8 Nothing in the foregoing paragraph is intended to restrict the Class Action Administrator
9 from disclosing to a member of the Settlement Class any Amazon Protected Material that
10 specifically relates to that individual.

11 Certain Members of the Settlement Class: As a limited exception and subject to this
12 Rider, as of the date of production, the Class Action Administrator may furnish to Counsel for
13 Plaintiffs the contact information for and Lifetime Spending Amount associated with each
14 Settlement Class Member who has a Lifetime Spending Amount of greater than or equal to
15 \$25,000.

16 For the avoidance of doubt, no Settlement Class Member's contact information or
17 Lifetime Spending Amounts shall be provided to Counsel for Plaintiffs unless Counsel for
18 Plaintiffs have been appointed by the Court as Class Counsel.

19 Any contact information disclosed to counsel for Plaintiffs pursuant to this section shall
20 be used solely for the purpose of providing notice of the Class Action Settlement Agreement to
21 members of the Settlement Class, and counsel for Plaintiffs shall disclose Contact Information
22 only to counsel's staff, or to any copying, clerical or other support services working at the
23 direction of counsel for Plaintiffs, to whom disclosure is reasonably necessary to provide notice
24 to the member. All Contact Information relating to a member of the Settlement Class shall be
25 destroyed by counsel for Plaintiffs upon confirmation that the member has received actual notice
26 of the Class Action Settlement.

1 **CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL**

2 This Rider is intended to provide no mechanism to the Parties through which they can
3 challenge the designation or protected status of Amazon Protected Materials.

4 **SUBPOENAS OR COURT ORDERS**

5 If at any time Amazon Protected Material is subpoenaed by any court, arbitral,
6 administrative, or legislative body, the Party to whom the subpoena or other request is directed
7 shall immediately give prompt written notice thereof to Amazon and to its counsel and shall
8 provide Amazon with an opportunity to move for a protective order regarding the production of
9 Amazon Protected Materials implicated by the subpoena.

10 **FILING PROTECTED MATERIAL**

11 Absent written permission from Amazon or a court Order secured after appropriate notice
12 to all interested persons, the Parties may not file or disclose in the public record any Amazon
13 Protected Material.

14 **INADVERTENT DISCLOSURE NOT AUTHORIZED BY ORDER**

15 In the event of a disclosure of any Amazon Protected Material pursuant to this Rider to
16 any person or persons not authorized to receive such disclosure under this Rider, the Party
17 responsible for having made such disclosure, and each Party with knowledge thereof, shall
18 immediately notify counsel for Amazon and provide to such counsel all known relevant
19 information concerning the nature and circumstances of the disclosure. The responsible
20 disclosing Party shall also promptly take all reasonable measures to retrieve the improperly
21 disclosed Amazon Protected Material and to ensure that no further or greater unauthorized
22 disclosure and/or use thereof is made.

23 Unauthorized or inadvertent disclosure does not change the status of Amazon Protected
24 Material or waive the right to hold the disclosed document or information as Protected.

25 **FINAL DISPOSITION**

26 Not later than ninety (90) days after closure of the Final Disposition of this case, each
27 Party and the Class Action Administrator shall return all Discovery Material of a Producing

1 Party to the respective outside counsel of the Producing Party or destroy such Material, at the
 2 option of Amazon. For purposes of this Order, "Final Disposition" occurs after an order,
 3 mandate, or dismissal finally terminating the above-captioned action with prejudice, including all
 4 appeals.

5 All Parties that have received any such Discovery Material, as well as the Class Action
 6 Administrator, shall certify in writing that all such materials have been returned to counsel for
 7 Amazon or destroyed.

8 MISCELLANEOUS

9 Termination of Matter and Retention of Jurisdiction. The Parties and Amazon agree that
 10 the terms of this Rider shall survive and remain in effect after the Final Determination of the
 11 Actions. The Court shall retain jurisdiction after Final Determination of the matter to hear and
 12 resolve any disputes arising out of this Rider.

13 Successors. This Rider shall be binding upon Amazon and the Parties hereto, their
 14 attorneys, and their successors, executors, personal representatives, administrators, heirs, legal
 15 representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and
 16 experts, and any persons or organizations over which they have direct control.

17 Modification by Court. This Order is subject to further court order based upon public
 18 policy or other considerations, and the Court may modify this Order sua sponte in the interests of
 19 justice. The United States District Court for the Western District of Washington is responsible
 20 for the interpretation and enforcement of this Order. All disputes concerning Amazon Protected
 21 Material, however designated, produced under the protection of this Order shall be resolved by
 22 the United States District Court for the Western District of Washington.

23 Discovery Rules Remain Unchanged. Nothing herein shall alter or change in any way
 24 the discovery provisions of the Federal Rules of Civil Procedure, the Local Rules for the United
 25 States District Court for the Western District of Washington, or the Court's own orders.

26 Identification of any individual pursuant to this Protective Order does not make that individual
 27 available for deposition or any other form of discovery outside of the restrictions and procedures

1 of the Federal Rules of Civil Procedure, the Local Rules for the United States District Court for
2 the Western District of Washington, or the Court's own orders.

3 Representation and Agreements Regarding Production. Amazon represents that it will
4 complete production of emails and spending amounts, directly to the Settlement Administrator,
5 as promptly as possible, and on or before December 1, 2020. Amazon further represents that it
6 will promptly complete production of names, physical addresses, and phone numbers
7 ("Supplemental Information") for class members who spent over \$100, to the extent Amazon is
8 in possession of such information, though compiling and producing the Supplemental
9 Information may require additional time and production may not be complete as of the Court-
10 ordered deadline. Class Counsel agrees to further meet and confer in good faith with Amazon
11 regarding timing of the production of the Supplemental Information, but reserve their right to
12 pursue appropriate remedies should Amazon not timely produce the Supplemental Information.

13 * * *

14
15 Respectfully submitted,

16
17 **Dated:** November 27, 2020

By: /s/ Todd Logan

18 Todd Logan*
19 tlogan@edelson.com
EDELSON PC
20 123 Townsend Street, Suite 100
21 San Francisco, California 94107
Tel: 415.212.9300/Fax: 415.373.9435

22 By: /s/ Cecily C. Shiel
23 TOUSLEY BRAIN STEPHENS PLLC
24 Cecily C. Shiel, WSBA #50061
cshiel@tousley.com
1700 Seventh Avenue, Suite 2200
25 Seattle, Washington 98101-4416
Tel: 206.682.5600

26
27 *Class Counsel*

1 *Admitted *pro hac vice*
2
3
4

Dated: November 25, 2020

By: /s/ James Howard

5 James Howard (Bar No. 37259)
6 JimHoward@dwt.com
7 Molly N. Tullman (Bar No. 50420)
8 mollytullman@dwt.com
9 DAVIS WRIGHT TREMAINE LLP
10 920 Fifth Avenue, Suite 3300
11 Seattle, WA 98104-1610
12 Telephone: (206) 757-8137

13 *Attorneys for Nonparty Amazon.com, Inc.*

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated this 30th day of November, 2020.

Robert S. Lasnik
ROBERT S. LASNIK
UNITED STATES DISTRICT JUDGE

EXHIBIT A

I, _____, acknowledge and declare that I have received a copy of the Agreed Rider To Protective Order Regarding The Use And Disclosure Of Discovery Produced By Nonparty Amazon.com, Inc. (“Rider”) in *Kater et al. v. Churchill Downs Incorporated, et al.*, No. C15-0612-RSL and *Thimmegowda v. Big Fish Games, et al.*, NO. C19-0199-RSL, United States District Court, District of Washington, Western District. Having read and understood the terms of the Rider, I agree to be bound by the terms of the Rider and consent to the jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Rider.

Name of individual:

Present occupation/job description: _____

Name of Company or Firm: _____

Address: _____

Dated:

[Signature]